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October 5, 2007

Via facsimile (914) 390-4085

The Honorable Charles L. Brieant  
United States District Judge  
United States District Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601

Re: Morocho v. Kelly, et al.  
Case No.: 07 CIV. 2979 (CJB)

Dear Judge Brieant:

We represent plaintiffs in the above referenced action. We write pursuant to Local Civil Rule 37.2 and Your Honor's Individual Practices to request a conference with the Court regarding discovery in this action. As set forth below, the defendants have refused to cooperate with our efforts to obtain discovery in this action

Defendants were serviced with the Summons and Complaint in this action on or about April 23, 2007. Thereafter defendants' counsel requested an extension of time to respond to the Complaint until June 15, 2007, and we consented. In the interim we received Your Honor's notice scheduling a conference pursuant to Federal Rule of Civil Procedure 16(b) on June 15, 2007, and immediately forwarded a copy to defendant.

Defendants then requested and received an adjournment of the June 15, 2007 scheduling conference until July 20, 2007. Shortly thereafter we wrote to defendants' counsel to schedule a conference pursuant to Federal Rule of Civil Procedure 26(f), but defendants' counsel advised that his partner's vacation schedule precluded a conference on the dates proposed.

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Subsequently, on June 15, 2007 Defendants filed a motion to dismiss, or in the alternative for summary judgment, and indicated to us that pursuant to an *ex parte* communication they had with chambers, the Court had determined that a discovery scheduling conference was unnecessary in light of defendants' motion.

When further efforts to schedule a Rule 26(f) conference with defendants' counsel were unsuccessful, we filed a timely opposition to defendants' motion. Due to alleged conflicts with defendants' counsel's vacation schedule, however, defendants later requested and received from the Court, an extension of time to file their reply papers in further support of their motion.

As Your Honor is aware, Rule 26(d) precludes plaintiff from taking discovery before the parties have conferred as required by Rule 26(f). Defendants, however, have apparently taken the position that their motion suspends the operation of their discovery obligations and particularly those imposed by Federal Rules of Civil Procedure 16 and 26.

Accordingly, plaintiffs respectfully request a scheduling conference at which a Scheduling Order will be entered providing for expedited discovery so that in the event that the Court determines to entertain defendants' pending pre-answer, pre-discovery summary judgment motion, the plaintiffs will be afforded an opportunity to submit a supplemental response to that motion which is informed by appropriate discovery.

Respectfully submitted,



Karen Zdanis

cc: Louis R. Satriale, Esq., via facsimile